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11 Bosco Credit LLC

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 In Re:  
16 JOSE A LOZA  
17 Debtor.

) CASE NO.: 18-42125

)  
) CHAPTER 13

)  
) RS No.: MRG-100

)  
) **MEMORANDUM OF POINTS**  
) **AND AUTHORITIES IN**  
) **SUPPORT OF MOTION FOR**  
) **RELIEF FROM AUTOMATIC**  
) **STAY**

)  
) Date: November 9, 2018

) Time: 10:00 a.m.

) Ctrm: 215

) Place: U.S. Bankruptcy Court

) 1300 Clay Street

) Oakland, CA 94612

)  
) Judge: Charles Novack

28 TO ALL PARTIES IN INTEREST AND TO THEIR ATTORNEYS OF RECORD:

1 Bosco Credit LLC, ("Movant"), by and through its undersigned attorney, moves this  
2 Court for termination of all stays and injunctions, pursuant to 11 U.S.C. §362(d) and 105 and  
3 Federal Rules of Bankruptcy Procedure 4001 and 9014 and regarding the real property  
4 commonly known as 335 Burbank Road, Antioch, CA 94509, ("Property" herein).

5 The relief requested in this Motion is proper for all of the reasons set forth in the  
6 Memorandum of Points and Authorities and incorporated herein by this reference.

7 On or about 9/11/2018, Debtor filed a Voluntary Petition under Chapter 13 of the  
8 Bankruptcy Code. Pursuant to 11 U.S.C. §362, the Petition stays the commencement or  
9 continuance of any proceedings against the Debtor or any act to obtain possession of any  
10 property of the Debtor or to enforce any lien against any property of the Debtor. This Court  
11 has jurisdiction pursuant to 28 U.S.C. §1334. The filing of this Motion commences a  
12 contested matter within the meaning of Bankruptcy Rule 9014.

13  
14 **RELIEF FROM STAY SHOULD BE GRANTED UNDER 11 U.S.C. SECTION**  
15 **362(D)(1) BECAUSE DEBTOR HAS NO OWNERSHIP INTEREST IN THE**  
16 **PROPERTY**  
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19 Pursuant to 11 U.S.C. §362(d)(1), Movant is entitled to relief from the automatic stay  
20 as Debtor no longer has an ownership interest in the property. The Debtor has the burden of  
21 showing there is no cause to terminate the stay. *In re Ellis*, 60 B.R. 432 (9<sup>th</sup> Circ. BAP 1985).  
22 Where cause is shown, courts have no discretion, but must grant relief. *In re Ford*, 36 B.R.  
23 501 (Dt 1983).

24 The evidence demonstrates that the Debtor does not have the right to continued  
25 occupancy of the Property. The subject petition was filed on September 11, 2018. A prior petition  
26 was filed on August 27, 2018 and was dismissed on September 11, 2018.

27 Movant was the successful purchaser of the Property at the foreclosure sale held on  
28 January 31, 2018. Pursuant to the Trustee's Deed Upon Sale recorded on February 5, 2018, as  
Document No.: 20189001808200003 Movant is the legal owner of the Property.

1                   **RELIEF FROM STAY SHOULD BE GRANTED UNDER 11 U.S.C.**  
2                   **SECTION 362(D)(2) BECAUSE THERE IS NO EQUITY IN THE**  
3                   **PROPERTY AND IT IS NOT NEEDED FOR AN EFFECTIVE**  
4                   **REORGANIZATION.**

5  
6           Bankruptcy Code *Section 362(d)(2)* provides for relief from the automatic stay if the  
7 Debtors do not have equity in the property and the property is not needed for an effective  
8 reorganization. The burden is on the Debtors to prove the Property is necessary to effect  
9 reorganization. In re Gauvin, 24 B.R. 578,580 (9th Cir.B.A.P. 1982).

10           Pursuant to *11 U.S.C. Section 362(d)(2)(A)* the Debtors do not have equity in the  
11 Property. As stated above, pursuant to the Trustee's Deed Upon Sale, recorded on February 5,  
12 2018, Movant is the owner of the Property. Therefore, Debtors do not have equity in the  
13 Property and Movant's Motion should be granted.

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22           Additionally, relief from stay is warranted where the Debtors fail to, "present  
23 any evidence about what their reorganization plan is or when it could be proposed and brought  
24 to fruition. . ."; without evidence these Debtors have, "failed to meet [their] burden of showing  
25 the "essential" connection between the property and a reasonably possible, successful  
26 reorganization in a reasonable time." In re Teresi, 134 B.R. 392, 398 (Bankr.E.D.Cal. 1991).  
27 Here, the Debtors do not own the Property because, Movant is the Owner of the Property.  
28 Debtors cannot reorganize a claim that is not property of the bankruptcy estate. Thus,

1 Movant's Motion should be granted Pursuant to *11 U.S.C. 362(d)(2)* because the Property is  
2 not necessary for effective reorganization.

3 Accordingly, relief from the automatic stay should be granted to Movant pursuant to 11  
4 U.S.C. §362(d)(1) and 11 U.S.C. §362(d)(2). Additionally Movant requests that it be awarded  
5 its attorney's fees and costs and that the Court waive the 14 day stay pursuant to Bankruptcy  
6 Rule 4001(a) (3); and for such other and further relief as the Court deems just and proper.  
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8 Dated: September 20th, 2018

LAW OFFICES OF MICHELLE GHIDOTTI

9  
10 /s/ Adam P. Thursby  
11 Adam P. Thursby, Esq.  
12 Bosco Credit LLC  
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